

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET  
P.O. Box 1347  
WILMINGTON, DELAWARE 19899-1347

302 658 9200  
302 658 3989 FAX

MICHAEL HOUGHTON  
302 351 9215  
302 425 4675 FAX  
mhoughton@mnat.com

March 19, 2007

**BY HAND**

Arnetta McRae, Chair  
Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

Re: **PSC Docket No. 06-241**

Dear Chair McRae:

In its March 13, 2007 Memorandum, ("Staff Memo") Staff identified 34 Items of information which NRG redacted from its 1,100 page response to the RFP, DEPSC #s 39 through 72, which it recommends be released as public information. On the evening of Friday, March 16, 2007, I wrote to James Geddes, Staff counsel in the above-captioned matter, protesting the significant prejudice to the ability of my client, NRG, to respond, resulting from the inconsistencies in Staff's description of which specific NRG redactions Staff is recommending be released to the public.

Staff appears to have made recommendations based on earlier NRG redactions, not those made pursuant to Staff's direction by NRG on February 26, 2007. Because of the inconsistencies in information disseminated by Staff, NRG has not known which redacted documents are at issue and NRG has asked for a delay in the Commission's Tuesday, March 20, 2007 consideration of redaction matters. (A copy of my March 16, 2007 letter is enclosed).

Mr. Geddes has informed me today that Staff will not agree to a delay in the Commission's consideration of the NRG redactions. Faced with the prospect that the Commission will consider the redaction issue at tomorrow's meeting, NRG has made its best effort to provide additional detailed information again showing why the material which it has redacted from its bid proposal constitutes privileged and confidential information which should not be released to the public at this time.

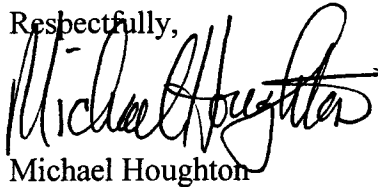
As noted in the attached Affidavit of Caroline Angoorly, Senior Vice President of NRG, which is submitted with this letter, NRG agrees that of the 34 Items identified in the Staff Memo, 9 Items either already have been or may be made available to the public. There are, therefore, 25

of the 34 Items identified in the Staff Memorandum which NRG strongly argues contain proprietary and confidential trade secret or commercial/financial information. The Angoorly Affidavit provides additional detail about the commercially sensitive nature of this information and why, if released, it could likely cause substantial competitive injury to NRG. Because the Angoorly Affidavit contains detailed discussion of confidential information, it has been filed with the Commission under seal and NRG requests, pursuant to Commission Rule 11, that it be maintained and remain under seal.

Additionally, if the Commission determines to consider Staff's recommendations on treatment of NRG's redacted information at tomorrow's Commission meeting, NRG respectfully request that the Commission hold a non-public executive session consisting of only Staff, their counsel, Commission members and, as appropriate, representatives of those other State agencies involved in the RPF review process for the purpose of allowing NRG to discuss the propriety of confidential treatment of Items identified in the Angoorly Affidavit with those parties. Any discussion of these Items in a public session will necessarily reveal confidential information not yet deemed available to the public and will prejudice the interest of NRG prior to the Commission having voted on the matter – and before NRG has had the opportunity to pursue a judicial remedy prior to disclosure.

NRG respectfully request that it be informed before tomorrow's meeting as to how the Commission intends to proceed on these issues and appreciates your prompt attention to these matters.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael Houghton", written over the printed name.

Michael Houghton

MH/fv

Enclosure

cc: All Commissioners

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET  
P.O. Box 1347  
WILMINGTON, DELAWARE 19899-1347

302 658 9200  
302 658 3989 Fax

MICHAEL HOUGHTON  
302 351 9215  
302 425 4675 Fax  
mhoughton@mnat.com

March 16, 2007

VIA E-MAIL

James Geddes, Esquire  
Ashby & Geddes  
500 Delaware Avenue  
Wilmington, DE 19899

Re: PSC Docket No. 06-241

Dear Jim:

I write as a follow-up to our brief telephone conversation towards the end of the business day today, Friday March 16, 2007. I noted in that call that my client NRG and this firm were today reviewing the March 13, 2007, Staff memorandum ("Staff Memo") posted March 14, 2007 on the Delaware Public Service Commission ("Commission") website outlining Staff's recommendations for the release (and withholding) of certain information which NRG had designated as confidential or proprietary in its response to public bid proposals in this matter. As I informed you, in undertaking this review, it became clear there was a significant problem.

The Staff Memo and Table A attached thereto purported to identify documents Staff was recommending be released by the Public Service Commission ("Commission") (DEPSC Nos. 39-72). Specifically, the Staff Memo and Attachment A identified certain documents NRG maintains are confidential. However, a set of documents which was Federal Expressed by Staff directly to my client, Caroline Angoorly, Senior Vice President for NRG, seems to consist of earlier – and not the most recent – redacted versions of some or all of the Table A, NRG-referenced documents.

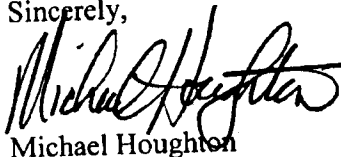
For example, in NRG's February 26, 2007, third redacted bid proposal submission, DEPSC Nos. 43 and 48 from Table A (consisting of a Consumer Price Index or "CPI" table) were unredacted by NRG, but are shown on Table A of the Staff Memo (and we believe in the document forwarded to Ms. Angoorly) as still being designated by NRG as confidential information. This despite the fact that NRG had already released that information to the public in its February 26, 2007 submission. Additionally, working by teleconference with our client today, we were unable to determine which portions of

DEPSC No. 71, a "Presentation on Repowering," were proposed for release by Staff since the version which was forwarded to Ms. Angoorly seems to be different than the version contained in NRG's February 26 third redacted bid proposal. Finally, the identity of several of NRG's potential vendors were unredacted from the Table of Contents in NRG's most recent public bid proposal, yet in DEPSC No. 69 of Table A Staff identified the redaction of these specific vendors and recommended the "release" of the potential vendors' names from the Table of Contents.

NRG understands from personal experience how difficult it can be to review, describe, and appropriately disseminate the redacted information involved in this proceeding. NRG is, however, faced with a Commission proceeding on Tuesday, March 20, 2007, where Staff is pressing public release of information and NRG is faced with a confused and conflicting record about what Staff proposes for release. The Company has been working diligently for days in its most recent attempt to further analyze material and to address what Staff contends is NRG's legal burden to demonstrate the propriety of maintaining the confidentiality of this information. To do so, NRG is entitled to a record upon which it can offer reasoned argument. However, we are seriously prejudiced, under the present circumstances and in the face of conflicting information, in our ability to properly address these matters before the Commission on Tuesday, March 20.

In light of the foregoing, it is inappropriate at this time for the Commission to assess or rule on the potential release of NRG's designated confidential information. NRG has made repeated efforts to further review and articulate the basis for maintaining the confidentiality of its redacted information. When faced with the argument that it ultimately bears the burden of demonstrating the bases for confidential treatment, it must in all fairness be afforded the opportunity to do so. Since NRG cannot now do so, in light of the confused state of the record, NRG respectfully request that Staff withdraw its request that its recommendations regarding confidentiality be considered at the March 20 Commission meeting and further request that any such Commission review be delayed until the record is clarified and the matters discussed above are adequately addressed.

Sincerely,



Michael Houghton

MH/wof

Cc: Interested Parties in PSC Docket No. 06-241